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COLORADO FORECLOSURE PROTECTION ACT

The “Colorado Foreclosure Protection Act” went into effect on May 30, 2006 and applies to **ALL** contacts between home owners facing foreclosure and persons acting as “foreclosure consultants” or “equity purchasers.” **THIS IS ONLY A SUMMARY OF PORTIONS OF THE NEW LAW. YOU SHOULD REVIEW THE ENTIRE ACT (SECTIONS 6-1-1101 THROUGH 6-1-1120, C.R.S.)**

EQUITY PURCHASERS

DEFINITIONS

- Applies only to a “**residence in foreclosure**” – any residential property (1 to 4 units) where the home owner is 30 days delinquent or in default on their mortgage, or upon which a Notice of Election and Demand has been recorded.
- Act applies to “**equity purchasers**,” defined as any person who acquires title to a residence in foreclosure other than through a public foreclosure sale conducted by the Public Trustee or by order of court.
 - **NOT INCLUDED** – Persons who acquire the property to use as their personal residence for at least one year or persons who acquire the property by a deed in lieu of foreclosure if their lien was recorded before the Notice of Election and Demand was recorded. Also, relatives of the home owner and banks, trust companies, savings and loan associations, credit unions, insurance companies, and title insurers, when performing their normal business activities.

REQUIREMENTS

- An equity purchase agreement must be in writing (at least 12-point type). The contract must be fully completed, signed and dated by the home owner and the equity purchaser **BEFORE** the execution of any instrument quit-claiming, assigning, transferring, conveying, or encumbering any interest in the home owner’s property. The contract (as well as any other documents used in the transaction) must be translated into the language principally spoken by the home owner and must include the following information:
 - The name, business address, and telephone number of the equity purchaser;
 - The street address and full legal description of the residence in foreclosure;
 - A clear and conspicuous disclosure of any financial or legal obligations of the home owner that will be assumed by the equity purchaser. If the equity purchaser is not assuming any financial or legal obligation of the home owner, the equity purchaser must provide to the home owner a separate written disclosure that substantially complies with section 18-5-102 (6), C.R.S.;
 - The total consideration to be paid by the equity purchaser in connection with or incident to the acquisition the residence in foreclosure;
 - The terms of payment or other consideration, including, but not limited to, any services of any nature that the equity purchaser represents will be performed for the home owner before or after the sale;

- The date and time when possession of the residence in foreclosure is to be transferred to the equity purchaser;
- The terms of any rental agreement or lease;
- The specifications of any option or right to repurchase the residence in foreclosure, including the specific amounts of any escrow deposit, down payment, purchase price, closing costs, commissions, or other fees or costs;
- A notice of cancellation as provided in section 6-1-1114 of the Act; **AND**
- A bold-faced Notice (14-point type) containing the information required by the Act, including the home owner's right to cancel contract.

PROHIBITED CONDUCT

- The Act prohibits the following conduct by equity purchasers:
 - Failing to comply with all requirements for written contracts under the Act;
 - Accepting from a home owner, before the expiration of cancellation period, a deed or any other instrument of conveyance of any interest in the property, recording any document affecting the property, transferring or encumbering or purporting to transfer or encumber an interest in the property to a third party, or paying the home owner any consideration;
 - Failing, within ten days following receipt of a notice of cancellation, to return to the home owner without condition the original contract and any other documents signed by the home owner;
 - Making any untrue or misleading statements of material fact regarding, among other things, the value of the residence in foreclosure or the amount of proceeds the home owner will receive after a foreclosure sale, or any other untrue or misleading statement concerning the sale of the residence in foreclosure to the equity purchaser; or
 - Engaging in any unconscionable conduct.

PENALTIES

- Violation of this Act may subject you to the following:
 - A misdemeanor punishable by up to one year in county jail, a fine of up to \$25,000, or both;
 - Civil penalties of up to \$2,000 per violation or up to \$10,000 per violation if the home owner is age 60 or older;
 - Treble damages, costs and attorney fees;
 - Injunctions, rescission, disgorgement of profits, and restitution to victims.

SPECIAL RULES FOR RECONVEYANCE TRANSACTIONS

- If the home owner retains possession of the property after the sale to an equity purchaser, with an option to repurchase the property, the equity purchaser **MUST** comply with these additional requirements:
 - Provide the home owner with a nonwaivable thirty-day right to cure any default and permit the home owner to exercise that right on at least three separate occasions;
 - Fully assume or discharge the lien in foreclosure as well as any prior liens that will not be extinguished by such foreclosure, without violation of the terms and conditions of the liens being assumed or discharged; **AND**
 - Verify and demonstrate that the home owner has or will have a reasonable ability to make any lease payments and to repurchase the property within the terms of the reconveyance transaction.
- These transactions are statutorily presumed to be **unconscionable** if the repurchase price exceeds twenty-five percent of the price at which the equity purchaser acquired the residence in foreclosure (acquisition price includes any actual costs incurred by the equity purchaser in assuming or discharging liens or other obligations). That means that the equity purchaser will have the burden of proving in court that the transaction was not unconscionable.